

SIKKIM



GOVERNMENT

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GOVERNMENT OF SIKKIM
HEALTH AND FAMILY WELFARE DEPARTMENT
TASHILING SECRETARIAT, GANGTOK

No. 02/H&FW

Dated: 06/04/2022

NOTIFICATION

In exercise of powers conferred by section 49, read with sections 23, 24, 25 and 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (Act No 16 of 2017), and to provide for the appointment, terms and conditions, qualifications and manner of inquiry by Ombudsman, the State Government hereby makes the following rules, namely:-

**Short title, and
commencement**

1. (1) These rules may be called the Sikkim Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2022.
- (2) These rules shall come into force on the date of their publication in the Official Gazette.

Definitions

2. In these rules unless the context otherwise requires,
 - (a) "Act" means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Central Act 16 of 2017);
 - (b) "AIDS" means Acquired Immuno Deficiency Syndrome;
 - (c) "Appropriate authority" means, unless otherwise notified, the National (AIDS) Acquired Immune Deficiency Syndrome Control Organisation in the case of the Central Government and the Sikkim State (AIDS) Acquired Immune Deficiency Syndrome Control Society in the case of the Government of Sikkim;
 - (d) "Government" means the Government of Sikkim in the Department of Health and Family Welfare;
 - (e) "High burden districts" means districts notified as such by the appropriate authority from time to time;
 - (f) "HIV" means Human Immuno Deficiency Virus ;

- (g) "Ombudsman" means an Officer appointed or designated by the State Government, as the case may be, under section 23 of the Act;
- (h) "Registrar" means the Registrar of the High Court and Chief Judicial Magistrate at the District Level;
- (i) "Society" means the Sikkim State AIDS Control Society;
- (j) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings assigned to them in the Act.

Appointment and Jurisdiction of Ombudsman

- 3. The Government shall appoint a senior official not below the rank of Additional Director from the Health and Family Welfare Department as Ombudsman for the whole of Sikkim;

Provided that the State Government shall provide him / her assistance from the Department of Law and Parliamentary Affairs on legal issues that may arise in the course of his / her work, if so requested.

Terms and conditions of services of Ombudsman

- 4. (1) The Ombudsman shall carry out his functions with assistance from the Department of Law and Parliamentary Affairs on legal issues that may arise in the course of his work, if so requested.
- (2) The Ombudsman shall be eligible for salary and allowances at such rates as the rank he / she holds in the State Government (not below the rank of Additional Director).
- (3) The Ombudsman shall hold office for a term of 3 (three) years, and shall be eligible for reappointment for another 3 (three) years.
Provided that no Ombudsman shall hold office as such after he / she has attained the age of 70 (seventy) years.
- (4) The Ombudsman may relinquish office by giving written notice of not less than 3 (three) months to the State Government.
- (5) The State Government shall remove an Ombudsman from office who:-
 - (i) is, or at any time has been, adjudged insolvent;
 - (ii) has become physically or mentally incapable of acting as Ombudsman;
 - (iii) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the State Government likely to prejudicially affect such person's functions as the Ombudsman; or
 - (iv) has so abused the position as to render continuation in office detrimental to the public interest.

Manner of inquiring into complaints by Ombudsman

- 5. (a) The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act.
- (b) While inquiring into complaints under the Act, the Ombudsman shall not be bound by any rules of evidence under Indian

Evidence Act 1872 and may follow such procedure as he / she considers just and proper.

- (c) No cross-examination shall be permitted in inquiries before the Ombudsman.
- (d) The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to Human Immuno Deficiency Virus, and persons working in the fields of Human Immuno Deficiency Virus and Acquired Immuno Deficiency Syndrome, public health or health delivery systems.
- (e) The Ombudsman shall have the power to pass interim orders in cases of medical emergency without hearing the parties.
- (f) The Ombudsman shall have the power to pass orders, including, withdrawal and rectification of the violation, counseling, social service etc.
- (g) The Ombudsman shall inform the complainant of the action taken.
- (h) The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from his / her order.

**Manner of
maintaining
records by
Ombudsman**

6. (1) The Ombudsman shall -
- (a) immediately on receipt of a complaint, record it by assigning a sequential unique complaint number in a register maintained solely for that purpose in physical or computerized form;
 - (b) on receipt of the complaint, acknowledge it by sending the unique complaint number by SMS or e-mail to the complainant where available;
 - (c) record the time of the complaint and the action taken on the complaint in the register; and
 - (d) maintain the register of complaints in a manner that ensures confidentiality of data.
- (2) The Ombudsman shall comply with data protection measures in accordance with section 11 of the Act.

**Manner of making
complaints to
Ombudsman**

7. (1) Any person shall make a complaint to the Ombudsman within whose jurisdiction the alleged violation took place, within 3 (three) months from the date when the person making the complaint became aware of the alleged violation of the provision of the Act:

Provided that the Ombudsman may, for reasons to be recorded in writing, extend the time limit to make the complaint by a further period of 3 (three) months, if he / she is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period.

- (2) All complaints shall be made to the Ombudsman in writing in accordance with the form set out in the Appendix to the Rules.

Provided that where a complainant is not in a position to make the complaint in writing, the Ombudsman shall render all reasonable assistance to the complainant to reduce the complaint in writing.

- (3) In cases of medical emergency, the Ombudsman or his / her assistant may visit the complainant at the location of the alleged violation or any other convenient place to enable written documentation of the complaint.
- (4) The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the website:

Provided that the State Government shall within 7 (seven) days of the appointment of the Ombudsman establish a website of the Ombudsman.

**State Government
to disseminate
information on
Ombudsman**

8. (1) Within 30 (thirty) days of the appointment of the Ombudsman, the appropriate authority under the State Government shall disseminate information about the office of the Ombudsman, including the Ombudsman's jurisdiction, role, functioning and procedures and the manner in which complaints can be made to the Ombudsman.
- (2) Such dissemination of information shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

**Manner of
recording
pseudonym and
providing
suppression of
identity in legal
proceedings**

9. (1) In any legal proceeding where a court, pursuant to clause (a) of sub-section (1) of section 34 of the Act directs, on an application made by a protected person or any other person, that in the interests of justice the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Registrar shall direct all parties involved to:-
- (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court, which shall be kept in a sealed cover and in safe custody with the Registrar; and
- (ii) Serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential.
- (2) The Registrar shall provide pseudonyms to protected persons involved in the legal proceedings in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential.

- (3) The Registrar shall place the sealed covered documents before the court on the first date the legal proceeding is listed for hearing before the court, if so required by the court.
- (4) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court Board, interim orders and final judgments.
- (5) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistants and staff.

Exception: Where in the interest of justice the name and identity of the protected person needs to be revealed to a third party, it shall only be allowed by an order of the court.

- (6) Printing or publishing any matter in relation to the aforementioned legal proceedings in electronic or any other form, shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding.
- (7) In any legal proceeding before it under the Act, the court shall comply with data protection measures in accordance with section 11 of the Act.

APPENDIX

Form for making Complaint to Ombudsman

(see rule 7(2))

1. Date of Incident _____
2. Place of Incident _____
3. Description of incident _____
4. Person/ Institution responsible for the incident _____

Signature/ Thumb Impression of Complainant*

Name:

Date:

Mobile No./email/Fax/Address:

For Official Use only:

Unique Complaint Number: _____

**Where the complaint is received telephonically and reduced to writing by the Ombudsman, the Ombudsman shall sign the Form.*

(Dr. Pempa Tshering Bhutia).
Director General cum Secretary.
Department of Health and Family Welfare.
Government of Sikkim.
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